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IN THE

Supreme Court of the United States

October Term, 1963

No. 245

MILTON BERMAN,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FO THE SECOND CIRCUIT

PETITION FOR CERTIORARI

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TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented for Review	2
Constitutional Provisions, Statutes and Rules	4
Statement of the Case	4
Reasons for Granting the Writ	7
I. The foreclosing of petitioner's right of appeal through narrow application of Rules 37 and 45 of the Criminal Rules was not clearly prescribed by the Rules, and departs from this Court's standard of due process so as to call for exercise of its powers of supervision	7
II. In dismissing the second appeal, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court; all doubts should be resolved in favor of petitioner's rights to appeal on constitutional grounds	13
Conclusion	14
Appendix A—Order and Judgment Dismissing First Appeal	1a
Appendix B—Order and Judgment Dismissing Second Appeal	2a
Appendix C—Opinion and Order Denying Motion to Suppress	4a
Appendix D—Constitutional Amendment, Statutes and Rules Involved	6a

PAGE

Authorities Cited

Cases

Berman v. United States, 302 U. S. 211 (1937) 13
Boykin v. Huff, 121 F. 2d 865 (App. D. C. 1941) 7

Chapman v. United States, 365 U. S. 610 (1961) 12
Chessman v. Teets, 354 U. S. 156 3
Corcoran v. United States, 231 F. 2d 449 (7th Cir. 1956) 13

Gallagher v. Crown Kosher Super Market of Mass., Inc., 366 U. S. 617 (1961) 10
Gonzalez v. United States, 233 F. 2d 825 (1st Cir. 1956) vacated, 352 U. S. 978 13

Hixon v. United States, 268 F. 2d 667 (C. A. Okla. 1959) 13

Huff v. United States, 192 F. 2d 911 (5th Cir. 1952), cert. denied 342 U. S. 946 7

Jones v. United States, 362 U. S. 257 (1960) 12

Meyers v. United States, 116 F. 2d 601 (5th Cir. 1941) 13

United States v. Dennis, 183 F. 2d 201 (2d Cir. 1950); affirmed, 341 U. S. 494; rehearing denied 342 U. S. 842, 355 U. S. 936 10
United States v. Foster, 83 F. Supp. 197 (D. C. S.D.N.Y. 1949) 10
United States v. Isabella, 251 F. 2d 223 (2d Cir. 1958) 11
United States v. Robinson, 361 U. S. 220 (1960) 7, 11

Wilson v. United States, 162 U. S. 613 12

Statutes

Title 5 U.S.C. §§ 86a, 87, 87a and 87c 8-9
Section 1 (18) of Title 11, U.S.C. 8
18 U.S.C. § 472 5
18 U.S.C. § 2315 5
Section 7503 of Title 26, U.S.C. 8
28 U.S.C. § 1254(1) 2

PAGE

Rules of Supreme Court

Rule 19 2

United States Constitution

Amendment V 4, 12

Federal Rules of Criminal Procedure

Rule 2 7
Rule 37 ..... 3, 4, 7 *passim*
Rule 45 ..... 7, 8, 11
Rule 56 8

Criminal Appeals Rules Act

Act of February 24, 1933, c. 119, 47 Stat. 904, Sec. 2; as amended 4, 7

New York State Statutes

McKinney's Consolidated Laws of New York: Book 11, County Law, §§ 206-a, 902; Book 29, Judiciary Law, § 282, Book 46, Public Officers Law, § 62 9

IN THE

Supreme Court of the United States

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No.

MILTON BERMAN,

Petitioner,

—against—

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Milton Berman, petitioner herein prays that a writ of certiorari issue to review two judgments of the United States Court of Appeals for the Second Circuit. The first judgment of the Court of Appeals was made and entered May 29, 1963, and dismissed on appeal of the petitioner filed Monday, May 6, 1963 from a judgment of conviction entered April 24, 1963 in the United States District Court for the Southern District of New York (Hon. Thomas F. Croake, Judge, sitting with a Jury). The second judgment of the Court of Appeals was made and entered June 26,

1963, and dismissed an appeal of the petitioner filed June 11, 1963 from an amended judgment made and entered on June 10, 1963 by said District Court (Hon. Thomas F. Croake, Judge; upon said conviction).

Opinions Below

There were no opinions delivered by the Court of Appeals in granting motions to dismiss the said appeals. An opinion of the District Court denying petitioner's motions to suppress evidence is set forth in Appendix C, *infra*.

Jurisdiction

The judgments appealed from were entered by the Court of Appeals on May 29, 1963 (Appendix A, *infra*) and on June 26, 1963 (Appendix B, *infra*). No motions for rehearings were made.

The jurisdiction of this Court is invoked under Rule 19 of the Supreme Court Rules and Title 28 U.S.C. § 1254(1) on the ground that review by the Supreme Court of the United States by writ of certiorari is sought on two judgments of dismissal of successive appeals, entered by the United States Court of Appeals for the Second Circuit.

Questions Presented for Review

(1) Whether it was improper for the Court of Appeals to dismiss an appeal filed on a Monday morning, the twelfth day following Wednesday afternoon sentencing and entry of judgment, where the Clerk's office was open only in the morning of the tenth day, which was a Saturday, and where

by reason thereof the appellant did not have the benefit of ten full days following the sentencing and entry of judgment for deliberation and consideration of the proposed appeal.

(2) Whether it was improper for the Court of Appeals to dismiss an appeal from the conviction filed within ten days following a resentencing and amended judgment upon the original conviction.

(3) Whether petitioner was deprived of due process of law by either the dismissal of the first appeal or by the dismissal of the second appeal in that said dismissals deprived the petitioner of any opportunity for appellate review of serious constitutional matters involved in proceedings in the trial court—to wit: the question of whether petitioner's motions in the trial court for suppression of evidence obtained by government agents sans warrant and without petitioner's free and knowledgeable consent, and for suppression of a statement found to have been given involuntarily by the petitioner, were improperly denied by the trial court. With this arises the subsidiary question whether, in light of the doctrine of *Chessman* v. *Teets*, 354 U. S. 156, that Constitutional rights are to be protected by this Court no matter how late they may be asserted,—are Constitutional rights of the petitioner to be foreclosed by reason of the filing of the first Notice of Appeal one business day after the last day for filing fixed by Rule 37 of Federal Rules of Criminal Procedure adopted by this Court.

Constitutional Provisions, Statutes and Rules

1. Amendment V of the United States Constitution.

2. Criminal Appeals Rules Act, Act of February 24, 1933, c. 119, 47 Stat. 904, Sec. 2; as amended.

3. Rule 37(a) (2) of the Federal Rules of Criminal Procedure.

All of the foregoing are set forth in full in Appendix D annexed to this Petition.

Statement of the Case

Petitioner Milton Berman was indicted for possession of counterfeit money and of stolen securities moving in interstate commerce, and for transporting such securities in interstate commerce (621-624). Such counterfeit money and stolen securities were found on a search without a warrant by government agents of premises where petitioner rented desk space to conduct a business. On the eve of trial, petitioner moved to suppress as evidence such contraband items on the ground that they were obtained as the result of an illegal search and seizure conducted without warrant and without his free and knowledgeable consent (651-659). Decision was reserved pending the trial; the Court stated that evidence given at the trial would be considered with respect to the motion.

On trial, petitioner renewed the motion (9-10, 114-116). The Court reserved decision on the motion until after the trial (111-116, 463-464, 590-592). Petitioner also objected to introduction into evidence of an unsigned statement purporting to be that of the defendant, petitioner herein,

marked as Exhibit 9 for identication (35-41). The Court tentatively sustained the objection (41, 44, 202). At the end of the trial, after hearing argument (458-460) the Court decided to admit it into evidence and submit said Exhibit 9 for the consideration of the Jury (460-462a, 469-472). The Court submitted questions to the Jury for Special Findings. "1. Does Exhibit 9 reflect a statement made and adopted by the accused?" and "2. Was Exhibit 9 made by the defendant voluntarily?" (557-560). The jury answered *Yes* to Question (1) and *No* to Question (2) (570-571; 665A-665B)—i.e. that the statement was the Petitioner's but that it was not given voluntarily.

By leave of Court (590-592) the motion was renewed after trial with respect to said Exhibit 9 as well as to the contraband items (699-702). The motion as renewed was denied and the Court filed its opinion with respect thereto (703-705; set forth in Appendix C, *infra*).

Petitioner was convicted on two counts, one for possession of counterfeit money in violation of 18 U.S.C. § 472, and the other for possession of stolen securities moving in interstate commerce, in violation of 18 U.S.C. § 2315 (575-595). Petitioner was sentenced on Wednesday afternoon, April 24, 1963, to a prison term of two years on each count, to be served concurrently, and to a fine of $1,000.00 on each count (597-605). Judgment was accordingly entered against petitioner on April 24, 1963 (617).

Petitioner decided to appeal, and executed the first Notice of Appeal on May 2, 1963 (A5-6). This notice was filed on May 6, 1963 (706-708); A motion to dismiss the appeal was made by the United States Attorney on May 6, 1963 on the ground that the appeal was untimely, being filed more

than ten days after the judgment (A1-3). The motion to dismiss was granted, and a judgment dismissing such appeal was made and entered on May 29, 1963 (A8; 619-620; set forth as Appendix A, *infra*).

Thereafter, petitioner moved in the District Court for review and reduction of sentence and for other relief (716-717, 718-731). On June 10, 1963, the District Court (Hon. Thomas F. Croake, Judge) pronounced a new sentence and entered an amended judgment which provided for a prison term of one year eight months on each count, to be served concurrently, and for a fine of $750.00 on each count (606-616). The said judgment of June 10, 1963 (618) was marked "Amended Judgment" and related to the initial judgment of April 24, 1963 (617). On June 11, 1963, petitioner filed a Notice of Appeal from said amended judgment (732-734). The United States Attorney moved to dismiss the latter appeal from want of jurisdiction (A4 1-4). Said motion was heard June 17, 1963, and was granted. On June 26, 1963, the Court of Appeals made and entered a judgment dismissing the latter appeal. (Set forth as Appendix B, *infra*).

REASONS FOR GRANTING THE WRIT

I. The foreclosing of petitioner's right of appeal through narrow application of Rules 37 and 45 of the Criminal Rules was not clearly prescribed by the Rules, and departs from this Court's standard of due process so as to call for exercise of its powers of supervision.

It is recognized that there are sound policy reasons for limiting the time for convicted defendants to file appeals. Such restrictions obviate many frivolous, unmeritorious appeals interposed as afterthoughts primarily to delay enforcement of judgments. *Huff* v. *United States*, 192 F. 2d 911 (5th Cir. 1952), *cert. denied* 342 U. S. 946. It is not contended that the Supreme Court lacked the power to enact Rules 37 and 45 of the Rules of Criminal Procedure, as amended, or that the Rules as they now stand must be held to constitute a denial of due process or other constitutional right. *Criminal Appeals Rules Act*, Act of February 24, 1933, c. 119, 47 Stat. 904, as amended. See *United States* v. *Robinson*, 361 U. S. 220 (1960).

It is contended that, as a necessary concomitant of the delegation of the power to make rules, that the Federal Rules of Criminal Procedure must "be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay" (Rule 2). It is submitted that as a corollary, the right of appeal may not be foreclosed except by the definite and unequivocal application of simple and precise rules that clearly specify the times and circumstances when the right of appeal can be cut off. *Compare*, *Boykin* v. *Huff*, 121 F. 2d 865 (App. D. C. 1941).

The fact is in the instant case that the initial sentencing was on April 24, 1963, a Wednesday afternoon, and that the

expiration of the ten-day period, provided in Rule 37, occurred on Saturday. It so happens that the office of the Clerk of the District Court of the Southern District of New York was open on Saturday. Nothing contained in Rules 45 or 56 specify or refer to any definition of a holiday or a half holiday. There is no provision of Rules 37, 45, or 56 of the Federal Rules of Criminal Procedure that establish with any degree of clarity or certainty what days may be considered as holidays or their equivalent by the Federal Courts.

Overall federal definitions of "holiday" or "half-holiday" are not to be found in Federal statutes. Section 1 (18) of Title 11, U.S.C., defines "holiday" with reference to the Bankruptcy Act. Section 7503 of Title 26, U.S.C. gives fairly precise definitions of "legal holiday" for purposes of the Internal Revenue Code.* Title 5 U.S.C. §§ 86a, 87,

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* This section 7503 is noteworthy in that it provides for resolution of many doubtful matters not provided for in Rule 45 (a) of the Federal Rules of Criminal Procedure nor in the analagous Rule 6(a) of the Federal Rules of Civil Procedure. Title 26 U.S.C., § 7503 provides:

> § 7503. *Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.*
>
> When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term "legal holiday" means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or his delegate, or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

87a and 87c provide specifications of holiday with respect to the working hours of federal employees, and provide for methods to determine the holidays for which federal employees are to be excused from work. Executive Order No. 10358, promulgated June 9, 1952, 17 F. R. 1529, implements and clarifies the mechanics of the aforesaid sections of Title 5.

A note No. 4 to said Rule 56, drafted by the Advisory Committee on Rules, appointed by this Court, indicates that "The term 'legal holiday' includes Federal holidays as well as holidays prescribed by the laws of the State where the Clerk's office is located". No authority is quoted for this. However, in the light of the history of the federal system, and of federal-state cooperation and co-ordination, it would appear appropriate to refer to New York State statutes to obtain a full definition of what constitutes the equivalent of a Sunday or holiday in the State of New York. The Court should take note of the fact that the attorney for the defendant and his office staff practice in the State of New York and have been accustomed to the operation of New York State laws and rules (A5-6).

New York statutes provide that offices of clerks of courts located in New York City, as well as all County offices, and all state offices, are closed on Saturdays, and that whenever time for filing any paper or for doing any act expires on a Saturday, such time is deemed to be extended to and including the following business day. McKinney's Consolidated Laws of New York: Book 11, County Law, §§ 206-a, 902; Book 29, Judiciary Law, § 282, Book 46, Public Officers Law, § 62. (Set forth in Appendix D, *infra*). Section 282 of the Judiciary Law is particularly relevant since this statute provides that all papers which are to be filed in Courts of

Record of Counties within New York City on a Saturday may be filed the following Monday.

In the absence of any federal pre-emption of any definition of what is a holiday or half-holiday and what is a business day, it is proper (even though unnecessary) for federal Courts to look to State law and regulations, even with regard to procedural matters. In *United States* v. *Foster*, 83 F. Supp. 197 (D. C. S.D.N.Y. 1949), the District Court for the Southern District of New York held that it was proper for the federal district court of the Southern District of New York to refer to the practice followed in New York pursuant to Section 596 of the Judiciary Law for selecting grand and petit jurors. This practice was approved by the Court of Appeals for the Second Circuit in a case that was affirmed by this Court. *United States* v. *Dennis*, 183 F. 2d 201 (2d Cir. 1950); *affirmed*, 341 U. S. 494; *rehearing denied* 342 U. S. 842, 355 U. S. 936.

In a diverse but comparable context, this Court has recently supported States statutes that define *private* activities that are permitted and proscribed on Sundays. *Gallagher* v. *Crown Kosher Super Market of Mass., Inc.*, 366 U. S. 617 (1961). Such laws were held not violative of the First Amendment nor of the Fourteenth Amendment to the Federal Constitution. Thus, in the negative sense of Bill of Rights protections as well as in areas of positive law, the determinations of State legislatures and authorities as to the welfare and interests of a large portion of the population are entitled to weight.

By enacting several statutes closing public offices in the State of New York, and particularly in the City of New York, on Saturdays, the legislature of the State of New

York has declared its policy. That such general custom of Saturday work cessation by petitioner's attorneys was involved in the instant case (A5-6) to an even greater degree than in *United States* v. *Isabella*, 251 F. 2d 223 (2d Cir. 1958), where contentions as to deprivation of the defendant-appellant's rights based upon religious observances of the defendant's attorneys were rejected, should not preclude this Court from reviewing this matter independently, in the light of all circumstances bearing upon the substantial interests of the petitioner which are at stake herein. Petitioner, by being sentenced on a Wednesday afternoon, did not have the benefit of ten full days to deliberate as to his appeal.

Petitioner is not unmindful of the Court's ruling in the *Isabella* case, *supra*, 251 F. 2d 223 (2d Cir. 1958), cited in *United States* v. *Robinson*, 361 U. S. 220, 224 (1960), which held contrariwise to petitioner's position herein, and where the factual situation is in close accord with that herein. It is submitted that in the *Isabella* case the Court of Appeals for the Second Circuit erred in not giving close considerations to the matters urged herein, particularly the lack of clarity or precision in Rules 37 and 45 of the Federal Rules of Criminal Procedure as to the need for dismissal of an appeal filed on the Monday following a Saturday expiration of the ten-day period for filing an appeal from a judgment made the Wednesday of the preceding week.

Petitioner further submits that the within action is distinguishable in that it involves substantial and fundamental appealable issues of Constitutional law regarding the effect of an exhibit admitted into evidence which the Court had found was in substance a confession, and which the Jury specially found was made involuntarily by the petitioner.

The Court did not instruct the Jury to disregard this exhibit upon the Jury's reaching of said finding. The resultant prejudice was such a plain error under the long-established line of decisions of this Court as to involuntary statements and confessions, as to call for the reversal of the petitioner's conviction. *Wilson* v. *United States*, 162 U. S. 613, 622. Furthermore, the Court's decision and order denying petitioner's successive motions to suppress evidence, on the ground that petitioner's landlord had lawful control of the area where the portion of the search was conducted which yielded the contraband, and that the landlord's consent to such search was sufficient to make it lawful, are highly doubtful in the light of this Court's decisions in *Chapman* v. *United States*, 365 U. S. 610 (1961) and in *Jones* v. *United States*, 362 U. S. 257 (1960).

In summation, it is petitioner's position that any doubts as to the application of the Federal Rules of Criminal Procedure to cut off, foreclose or limit in any way a defendant's right of appeal are to be resolved in favor of his rights of substantive and procedural due process of law as are guaranteed by the Fifth Amendment to the United States Constitution. To the extent that the *Isabella* case, *supra*, may be considered determinative, it is submitted that that decision of the Court of Appeals for the Second Circuit, which appears to have been blindly followed by said Court in the instant case, was erroneous, and that this Court should exercise its power of supervision over said Circuit Court to grant the writ of Certiorari prayed for herein.

II. In dismissing the second appeal, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court; all doubts should be resolved in favor of petitioner's rights to appeal on constitutional grounds.

The "amended judgment" of the District Court entered June 10, 1963 (Appendix B), was a valid judgment from which the petitioner should have full right to exercise his right of appeal. The failure of the District Court to grant the petitioner's application for reduction of sentence and other relief sought by him would be reviewable upon a direct appeal timely brought. *Corcoran* v. *United States*, 231 F. 2d 449 (7th Cir. 1956). *Meyers* v. *United States*, 116 F. 2d 601 (5th Cir. 1941). It is apparent that the District Court's *grant* of such relief, and its entry of an appropriate amended judgment based upon the conviction after trial grants to the within petitioner the right to appeal therefrom within the ten-day period provided by Rule 37. *Gonzalez* v. *United States*, 233 F. 2d 825 (1st Cir. 1956) vacated, 352 U. S. 978. See also *Berman* v. *United States*, 302 U. S. 211 (1937); *compare Hixon* v. *United States*, 268 F. 2d 667 (C. A. Okla. 1959). Having exercised such right within the ten-day period following the amended judgment as limited by Rule 37, the Court of Appeals should not have dismissed the appeal. In absence of clear statutory authority clearly negating jurisdiction, the Court of Appeals should have upheld its jurisdiction so as to protect a defendant's right of appeal. Inasmuch as it has not, and by reason thereof the Petitioner's right to a fair and full hearing on appeal has been foreclosed, this Court should invoke its supervisory jurisdiction to decide this question for the first time under the Federal Rules of Criminal Procedure.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

IRWIN L. GERMAISE
Attorney for Petitioner
217 Broadway
New York 7, New York

Dated: New York, New York
June 28, 1963

APPENDIX A

Order and Judgment Dismissing First Appeal

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of May, one thousand nine hundred and sixty-three.

Present:

HON. STERRY R. WATERMAN,
HON. HENRY J. FRIENDLY,
HON. J. JOSEPH SMITH,
Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

MILTON BERMAN,

Defendant-Appellant.

A motion having been made herein by counsel for the appellee to dismiss the appeal for lack of jurisdiction.

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted and that the appeal from the United States District Court for the Southern District of New York be and it hereby is dismissed.

A. DANIEL FUSARO
Clerk

APPENDIX B

Order and Judgment Dismissing Second Appeal

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held in the United States Court House, in the City of New York, on the twenty-sixth day of June, one thousand nine hundred and sixty-three.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,
HON. CHARLES E. CLARK,
HON. PAUL R. HAYS,
Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

MILTON BERMAN,

Defendant-Appellant.

A motion having been made herein by counsel for the appellee to dismiss the appeal of June 11, 1963 for lack of jurisdiction

Upon consideration thereof, it is

Appendix B—Order and Judgment Dismissing Second Appeal

Ordered that said motion be and it hereby is granted and that the appeal from the United States District Court for the Southern District of New York be and it hereby is dismissed.

A. Daniel Fusaro
Clerk

by Vincent A. Carlin
Chief Deputy Clerk

APPENDIX C

Opinion and Order Denying Motion to Suppress

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

62 Crim. 1112

UNITED STATES OF AMERICA,

—v.—

MILTON BERMAN,

Defendant.

CROAKE, *District Judge*

MEMORANDUM

Defendant was tried before the court and a jury for (1) possession of 110 counterfeit $20.00 United States currency bills, (2) receiving stolen United States bonds which were in interstate commerce, and (3) transporting said bonds in interstate commerce.

On the eve of trial, defendant moved to suppress evidence consisting of the counterfeit bills and stolen bonds which he claimed had been unlawfully seized by federal agents. The court reserved decision and defendant proceeded to trial. The jury returned a verdict of guilty on the first two counts, and not guilty on the third.

At the trial the Government agents testified that they had called upon the defendant at his place of work, which was an automobile showroom operated and leased by Louis Okum. There the defendant operated his carleasing business from desk space which he rented from Mr. Okum. The

contriband material was found in a storeroom at the rear of the premises.

Defendant contends that the search and seizure was illegal because the agents did not have a search warrant and did not make the search pursuant to a lawful arrest or to consent. The Government argues, *inter alia*, that the search was lawful because it was incident to the consent of the prime lessee of the premises, Mr. Okum.

All the testimony relevant to the motion to suppress was taken before me during the course of the trial, affording an opportunity to observe the witnesses and evaluate their demeanor. In addition, I have examined a transcript of the trial proceedings which was furnished to me. After carefully considering all the circumstances, I am satisfied that the search and seizure complained of was made pursuant to the consent freely given by Louis Okum, and was therefore lawful. See *United States* v. *Walker*, 190 F. 2d 481 (2d Cir. 1951), *cert denied*, 342 U. S. 868 (1951), *reh. denied*, 342 U. S. 899 (1951); *Calhoun* v. *United States*, 172 F. 2d, 457 (5th Cir. 1949), *cert. denied*, 337 U. S. 938 (1949); *Cutting* v. *United States*, 169 F. 2d 951 (9th Cir. 1949).

The motion to suppress the aforesaid evidence is, accordingly, denied, and likewise the motion made by defendant for judgment of acquittal on the grounds of the allegedly illegal search and seizure is also denied. All other motions made by defendant and reserved upon by this court are denied.

So Ordered.

Dated: New York, New York
April 22, 1963

Thomas F. Croake
U. S. D. J.

APPENDIX D

1. Amendment V of the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Criminal Appeals Rules Act, Act of February 24, 1933, c. 119, 47 Stat. 904, Section 2, as amended:

Sec. 2. The right of appeal shall continue in those cases in which appeals are now authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

3. Rule 37(a) (2) of the Federal Rules of Criminal Procedure provides:

(2) TIME FOR TAKING APPEAL. An appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from, but if a motion for a new trial

or in arrest of judgment has been made within the 10-day period an appeal from a judgment of conviction may be taken within 10 days after entry of the order denying the motion. When a court after trial imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the government when authorized by statute may be taken within 30 days after entry of the judgment or order appealed from.

4. Rule 45(a) of the Federal Rules of Criminal Procedure provides:

(a) COMPUTATION. In computing any period of time the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

5. Rule 56 of the Federal Rules of Criminal Procedure provides:

The court of appeals and the district court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays.

Appendix D

6. McKinney's Consolidated Laws of New York, Book 11, County Law, Sec. 206-a:

1. Notwithstanding the provisions of any general or special law, holidays and Saturdays shall be considered as Sunday for all purposes relating to the transaction of business in county offices in every county of the state, except in a county wholly contained within a city. On all other days, except Sundays, such offices shall be kept open for the transaction of business. For the purposes of this section, the term "county offices" shall mean all offices, the officers or employees of which are paid in whole or in part from county funds.

2. Whenever the last day on which any paper shall be filed or act done or performed in any such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

3. Notwithstanding the foregoing provisions of this section, the motor vehicle section of a county clerk's office may, by resolution of the board of supervisors, be kept open on Saturdays during the month of January.

7. McKinney's Consolidated Laws of New York, Book 11, County Law, Sec. 902:

1. The offices of the county clerk in the counties constituting the city of New York shall remain open for the transaction of business from nine o'clock in the forenoon to four o'clock in the afternoon every day except Saturdays, Sundays and holidays and except in the months of July and August when said offices shall remain open for the trans-

action of business from nine o'clock in the forenoon to two o'clock in the afternoon except Saturdays, Sundays and holidays.

2. Whenever the last day on which any paper shall be filed or act done or performed in any such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

3. Notwithstanding the foregoing provisions of this section, the motor vehicle section of a county clerk's office may, by resolution of the board of estimate, be kept open on Saturdays during the month of January.

8. McKinney's Consolidated Laws of New York, Book 29, Judiciary Law, Section 282:

1. The offices of clerks of courts of record in the counties of New York, Kings, Queens, Richmond and Bronx shall remain open for the transaction of business from nine o'clock in the forenoon to four o'clock in the afternoon everyday except Saturdays, Sundays and holidays and except in the months of July and August when said offices shall remain open for the transaction of business from nine o'clock in the forenoon to two o'clock in the afternoon except Saturdays, Sundays and holidays.

2. Whenever the last day on which any paper shall be filed or act done or performed in any such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

Appendix D

9. McKinney's Consolidated Laws of New York, Book 46, Public Officers' Law, Sec. 62:

1. Holidays and half holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of each county. On all other days and half days, excepting Sundays, such offices shall be kept open for the transaction of business. This subdivision is subject to the provisions of section two hundred six-a of the county law and sections 1032-14.0 and 1052-22.0 of the administrative code of the city of New York.

2. Holidays and Saturdays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state. On all other days, excepting Sundays, such offices shall be kept open for the transaction of business. Whenever the last day on which any paper shall be filed or act done or performed in any such office expires on a Saturday, the time therefor is hereby extended to and including the next business day.